

## REMARKS

Examiners Mahafkey and Cano are thanked for the courtesy of the personal interview with the below signed attorney on January 25, 2006. In addition to the information contained in the Examiner's Interview Summary, the following is noted. While all pending claims were discussed generally, claims 1, 22 and 27 were discussed more specifically. The only prior art specifically discussed was PCT Publication No. WO 97/06695 (Hanke). The general thrust of the principal argument presented was that Hanke does not disclose a jacketed hard candy as called for by the claims. The remarks below repeat the argument presented during the interview. One other item that was discussed was the restriction requirement. As noted in the Examiner's Interview Summary, no agreement was reached.

The amendment does not involve new matter. Claim 30 has been amended to correct an obvious typographical error.

The election of Group I claims 1-21, 30, 31 and 33-36 is affirmed, as is the traversal of the restriction requirement.

The Office Action takes the position that the product of the Group I claims can be made by a materially different process than that specified by the Group II and Group III claims. With respect to the Group II claims, the Office Action suggests that the product of the Group I claims could be made by making an outer hard candy shell in the shape of a box and another, narrow, hard candy could be inserted into the hard candy box shell, therefore forming a jacketed hard candy. With the broad interpretation of the term "jacketed" thus being applied, it is submitted that restriction is improper because claim 22 would cover the method articulated in the Office Action. If a hard outer candy shell were made into the shape of a box, and another narrow hard candy inserted into the box, and this is deemed to be a jacketed hard candy, then step e) of claim 22, which calls for forming a first sweetened mass into a core and using a second sweetened mass to form an outer layer covering at least a majority of the core, would also cover this process. Since claim 22 would thus cover the proposed method, it is seen that claim 22 is not for a materially different process. Thus the allegation that the claimed

product of claim 1 could be made by a materially different process than claim 22 has not been shown.

As presented at the interview, a narrower reading of the term “jacketed hard candy” is also possible. Under that interpretation, a box that is formed first, with a separately formed narrow hard candy inserted in the box, would not be considered a jacketed hard candy. Under this claim interpretation, the alleged product (box shell with candy inserted into it) is not the product as claimed, and thus the claimed product would not be made by this allegedly different process, and restriction would therefore also be inappropriate. Under either claim interpretation, the justification given for the restriction between the Group I and Group II claims is not accurate.

The rationale for the restriction between the Group I and Group III claims is also flawed. Again, it is asserted that the product as claimed can be made by another and materially different process. It is not clear from the Office Action that the alleged “different process” would make the product of claim 1, as it is unclear how the first and second sweetened masses with different cooling rates would be “mixed.” Further, it is not clear how two different masses that are mixed would have different cooling rates. If the masses were mixed together it is very likely that their cooling rates would be affected by one another and the mixture would cool together, and both materials would thus cool at about the same rate. Further, it is not understood if the different cooling rates would inherently cause the mixed masses to form a jacketed hard candy. Finally, while claim 29 requires the core portion and the jacket portion to initially come from the same cooked blend, there is nothing that requires the two portions, after having flavoring and cooling agents mixed in, to have the same cooling rate. Thus, the portions might have different cooling rates, and the proposed method would then be covered by claim 29. As a result, while it is unclear if the proposed method would make the product of claim 1, it is not seen that the proposed method is materially distinct from the method of claim 29.

Finally, as to the restriction between the Group II and Group III claims, which are alleged to be independent species, it is submitted that claim 22 reads on the alleged species recited for Group III. This is made clear by dependent claim 23, which outlines how the method of claim 22 can be practiced by making a first composition (from a

combination of ingredients) and then separating the composition (combined ingredients) into two masses, one used to form the jacket and one used to form the core. Since claim 22 is generic and covers the process articulated as being a Group III species, it is clear that claim 22 belongs in Group III as well as Group II. Since the Group II and Group III claims are both drawn to the same class and subclass, it is believed that they can easily be examined together. Thus the restriction between Group II and Group III is improper.

Because the articulated reasons for the restriction between Groups I, II and III have been shown to be flawed, the restriction should be withdrawn and all claims examined in the present application. As a result, the above listing of claims does not show any of the claims as being withdrawn.

In the outstanding Office Action, claims 1-20, 30, 31 and 33 were rejected under 35 U.S.C. § 102(b) as being anticipated by Hanke. This rejection is respectfully traversed. Claim 1 calls for a jacketed hard candy having a core made of boiled hard candy and an outer layer also made of a boiled hard candy jacketed onto the core so as to cover at least a majority of the core. Further, claim 1 requires that the core and outer layer both contain one or more flavoring and cooling agents, and the level of cooling agents in the outer layer is greater than the level of any cooling agents in the core.

Hanke discloses a confectionary product suitable for the relief of cough and cold symptoms comprising a coolant composition and a flavor composition in distinct and discrete regions of the product. While Hanke, on page 3, states that the product can be in the form of hard and soft candies, it does not disclose a jacketed hard candy as called for in claim 1.

During the interview, it became clear that the position in the Office Action, that Hanke discloses a jacketed hard candy, is predicated on a misinterpretation of one of the teachings of Hanke. While line 22 of page 3 makes reference to "a centre-filled candy or dragee," this is not the same as a jacketed hard candy product. Particularly, there is nothing in Hanke which suggests that the "centre-filled candy" has a hard candy center.

There are other references in Hanke to center-filled products, and none of these have a hard candy center jacketed by a boiled hard candy. Page 2, lines 14-15

describe a prior art product with a hard candy outer shell and a powdered centerfill. Page 12, lines 14-17 describes an embodiment of the invention "using centre-filled candies wherein the confectionery product comprises a powdered filling of the flavour or cooling composition and the hard candy coat comprises the other of the flavour or cooling composition." Thus, where specific center-filled products are discussed in Hanke, they have a powder center filling, and not a hard boiled candy as a core covered by a boiled hard candy jacket.

During the interview, the Examiner pointed to teachings in Hanke regarding lozenges, which would typically be hard candies. However, lozenges are not typically center-filled, nor are they typically jacketed hard candies. Thus the fact that Hanke discloses a lozenge does not mean that it discloses a jacketed hard candy product.

There are a number of products that could include a hard candy and be within the scope of the claims of Hanke that would not be jacketed hard candies. Hanke requires that a coolant composition and a flavor composition are in discrete regions. A center-filled hard candy with a powder center filling, such as discussed on page 12 of Hanke, could be made with the flavor composition in the hard candy and the coolant composition in the powdered center fill. Page 10 discusses an embodiment that uses a crystalline coating containing the flavor applied on a lozenge. Again, this would not be a jacketed hard candy. A laminated hard candy could also be made with two layers of hard candy, one on top of the other, with a flavor composition in one layer and a coolant composition in the other layer. This hard candy would not be considered a jacketed hard candy because one layer would only cover one side of the other layer, and not form a jacket around a core.

As noted above, Hanke does not expressly disclose a core made of a boiled hard candy containing one or more flavoring and cooling agents and an outer layer also made of a boiled hard candy and containing one or more flavoring and cooling agents, the outer layer being jacketed onto the core so as to cover at least a majority of the core, as required by claim 1. Since there are embodiments of Hanke that would not fit within the scope of claim 1, Hanke does not inherently disclose the invention of claim 1 either. Further, while Hanke does require the product to have a coolant composition in one region and a flavor composition in another region, there is

no disclosure of a jacketed hard candy with the level of cooling agents in the outer layer being greater than the level of any cooling agents in the core, as also required by claim 1. Thus claim 1, and claims 2-20, 30, 31 and 33 dependent thereon, are not anticipated by Hanke.

The Office Action points to various teachings in Hanke as meeting the requirements of the dependent claims. However, for the most part, Hanke teaches soft confectionery products, and thus many of the specific disclosures relate to such soft products and not hard candies. For example, claims 2 and 3 call for certain ratios of the weight of the core to the weight of the jacket. The Office Action asserts that Hanke discloses these ratios on page 13, paragraph 3. Paragraph 3 on page 13 discusses a gum or pastille body, neither of which are jacketed hard candies. The pastilles are softened and tumbled in a drum with cooling agent treated sugar crystals. The sugar crystals that stick to the pastille can be 5% to about 15% of the finished pastille weight. There is nothing in Hanke that would suggest that a jacketed hard candy could be made, much less with the ratio of 5% to 15% jacket on the cores. Thus claims 2 and 3 are further patentable over Hanke. Likewise, the other teachings of Hanke relied upon in the Office Action as supporting the rejection of dependent claims 4-20, 30-31 and 33 would not be applicable to a jacketed hard candy. Thus the other dependent claims are also further patentable over Hanke.

In the outstanding Office Action, claims 6 and 34 were rejected under 35 U.S.C. § 103(a) as being obvious in view of Hanke. This rejection is respectfully traversed. Claims 6 and 34 are dependent on claim 1 and include the limitations of claim 1 not found in Hanke. There would be no reason, other than hindsight of the present invention, to modify Hanke and use a jacketed hard candy as called for by claim 1 to make the product of Hanke. Certainly the Office Action makes no explanation of any motivation to change the products disclosed in Hanke to be a jacketed hard candy. Thus claims 6 and 34 are patentable over Hanke.

In the outstanding Office Action, claims 7, 14 and 15 were rejected under 35 U.S.C. § 103(a) as being obvious over Hanke in view of U.S. Patent No. 6,306,429 (Bealin-Kelly). This rejection is also respectfully traversed. Bealin-Kelly, like Hanke, discloses throat drops for relief of cough and cold symptoms. Also, like Hanke, Bealin-

Kelly discloses "centre-filled confectionery compositions." Also, like Hanke, there is no suggestion that those center-filled compositions would provide a core made of a boiled hard candy and an outer layer also made of a boiled hard candy jacketed onto the core. Instead, as noted in col. 4, lines 56-58, the "filling can be a solid, particularly a powder, or a liquid, including forms of intermediate consistency such as a paste or a gel." This is consistent with the general understanding, that center-filled products have a filling that is a powder or liquid or gel, rather than a boiled hard candy core that has a boiled hard candy jacketed onto it. Since claims 7, 14 and 15 are dependent on claim 1, they differ from Hanke as noted above with respect to claim 1. Further, since Bealin-Kelly does not disclose the features noted as being missing in Hanke, the combination of Hanke and Bealin-Kelly is also missing these features. Thus, claims 7, 14 and 15 are patentable over Hanke and Bealin-Kelly.

In the outstanding Office Action, claim 21 was rejected under 35 U.S.C. § 103(a) as being obvious over Hanke in view of U.S. Patent No. 4,452,825 (Klacik). This rejection is also respectfully traversed. Claim 21 is dependent on claim 1, and thus differs from Hanke for at least the reasons specified above. Klacik discloses a sorbitol hard candy that is made by depositing in a mold. There is no suggestion of jacketing one boiled hard candy onto another boiled hard candy. Thus claim 21 is patentable over Hanke and Klacik.

In the outstanding Office Action, claims 35 and 36 were rejected under 35 U.S.C. § 103(a) as being obvious over Hanke in view of page 231 of the publication "New Ingredients in Food Processing" (Linden and Lorient). This rejection is also respectfully traversed. Claims 35 and 36 are dependent on claim 1, and thus differ from Hanke for at least the reasons identified above. While Linden and Lorient discloses that aspartame is 200 times sweeter than sucrose, there is no suggestion that aspartame be used in a jacketed hard boiled candy. Thus claims 35 and 36 are patentable over Hanke and Linden and Lorient.

The Applicants have made a novel and non-obvious contribution to the art of jacketed hard candy products. The claims at issue distinguish over the cited

references and are in condition for allowance. Accordingly, such allowance is now earnestly requested.

Respectfully submitted,

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